



APPENDIX A.

Testimony on cross-examination of the witnesses to whom Petitioner refers this Court in its Appendices A and B to sustain its assertion that "absolutely the entire purchasing public of the United States has been and is being deceived * * * and believes that the Lorillard Beech-Nut products are produced by the Beech-Nut Packing Company." (Brief, p. 75.)

EDWARD ABRAMS, cigar store, by stipulation admits: "that he never examined a package of cigarettes and never paid any attention to the same * * *; that if he had seen the name P. Lorillard Company on the package he would have known that it was a product of P. Lorillard Company, tobacco manufacturers, as he knows that the P. Lorillard Company is a large tobacco manufacturing concern; * * *" (I, p. 388).

JOSEPH S. AISENBERG, grocer: "X-Q.48. When did you first examine a package of those Beech-Nut cigarettes? A. At the time I made the inquiry regarding the maker of the cigarette or the manufacturer. X-Q.49. Then you examined them? A. Then I looked at them, yes. X-Q.50. Whose name did you see? A. I saw the name that appears on there, P. Lorillard. X-Q.51. You knew it was not the Beech-Nut Packing Company's cigarette? A. Yes. X-Q.52. Up to that time you had not examined the package? A. Up to that time I had not taken the trouble to, no." (I, pp. 153-4.)

R. J. ANDREWS, clerk, by stipulation admits: "I did not ask for Beech-Nut cigarettes of the Beech-Nut Packing Company when I made the purchase but simply asked for a package of Beech-Nut Cigarettes. I did not examine the package particularly and therefore did not notice the name P. Lorillard Co. appearing thereon." (I, p. 342).

FRANK ARNOLD, JR., Accountant: "Q. Did you know who made the Camel cigarette? A. No, sir. Q. As a matter of fact, you didn't care, did you? A. No, sir. Q. The Camel cigarette had pleased your taste? A.

Yes, sir. Q. Like Mr. Disbrow, the last witness, tobacco is tobacco—if it happens to hit your taste, it is what you like, is it? A. Yes, sir. Q. You don't care whether it is made by Beech-Nut or by Lorillard Company or by any one else, do you? A. No, sir. Q. If the blend suits your fancy, that is what you buy, isn't it? A. Yes." (V, pp. 2501-2.)

JAMES F. BALLARD, butcher: "X-Q.20. Did you ever hear of the P. Lorillard Company? A. Yes, I heard of it. X-Q.21. They are a large tobacco company, are they not? A. Yes, sir. * * * X-Q.30. You do not find the name 'Beech-Nut Packing Company' on this package of cigarettes? A. No. X-Q.31. But you do find the name 'P. Lorillard Company'? A. Exactly. X-Q.32. And you know the P. Lorillard Company tobacco people? A. Yes, I know of them." (I, pp. 480-1).

A. V. BOBB, butcher: "X-Q.23. You have heard of the P. Lorillard Company, have you not? A. Yes, I have heard of them; yes. * * * X-Q.29. I understand you have been chewing this tobacco for five years? A. About four years; I would not say five. X-Q.30. About four years? A. About four years. X-Q.31. And you had never taken the trouble to look to see whose name was on there? A. Never looked at the name; just stuck it in my pocket and when I wanted a chew just took a handful out." (I, pp. 475-6).

DORACE L. BOTTOMLY, grocery clerk: "X-Q.23. Did you purchase any of these Beech-Nut cigarettes yourself? A. No, I didn't. X-Q.24. You have never gone into a store and asked for Beech-Nut cigarettes? A. I never have. X-Q.25. Did you handle the package your brother had? A. I did. X-Q.26. Did you take the trouble to examine it? A. Not closely, no. * * * X-Q.37. You don't chew tobacco? A. No. X-Q.38. Smoke cigarettes? A. No." (I, pp. 168-70.)

T. J. BRANIGAN, shoe clerk: "X-Q.24. Did you ever hear of P. Lorillard Co.? A. Yes. X-Q.25. They are large manufacturers of tobacco products, are they not? A. Yes. * * * X-Q.31. You never took the trouble to examine that pack of cigarettes to see who did produce

it, did you? A. Never. X-Q.32. And when you were looking at all these advertisements and displays you never took the trouble to see whose name was on them? A. No, I didn't. I just looked at the head line. X-Q.33. At the word Beech-Nut? A. That's all. X-Q.34. You didn't pay any attention to the name at all? A. No." (I, p. 287).

J. E. BRIMAKOW, cigar clerk: "X-Q.25. You know the Lorillard Company is a very large tobacco concern? A. Yes. X-Q.26. They handle a good large line of cigarettes? A. High-grade cigarettes. X-Q.27. You have a good sale of their products? A. We have a good sale of their products. X-Q.28. In other words, you have absolutely no objection to ever putting in a P. Lorillard Company tobacco product, have you, because their reputation is good? A. Sure. X-Q.29. Did you look at these packages when you first received them? A. I did. X-Q.30. You saw the name 'Lorillards' on them? A. Yes. I did. X-Q.31. You knew they were Lorillard's cigarettes? A. Yes." (I, pp. 613-4).

ROBERT N. BROUGHTON, druggist: "X-Q.18. You did not buy from the manufacturer direct? A. No. The first carton I bought direct from their salesman, the P. Lorillard Company salesman. I paid him cash right on the spot. * * * X-Q.21. Did you ever look at this package to decide whether the goods were those of the P. Lorillard Company or the Beech-Nut Packing Company? A. I never did. X-Q.22. Just handed the cigarettes out? A. Yes. If they called for Beech-Nut I handed them out. X-Q.23. That name, P. Lorillard Company, on this package of cigarettes, Plaintiff's Exhibit No. 1, indicates to you that it is the product of the P. Lorillard Company, does it not? A. Yes, it does." (I, p. 229-30).

R. A. BROWN, insurance, by stipulation admits: "I have only purchased, as I recall, one package of these cigarettes, and when I purchased them I did not ask for cigarettes of the Beech-Nut Packing Company, but merely for a package of Beech-Nut cigarettes. I did not notice the name P. Lorillard Co. on the package as I did not examine the package very closely." (I, p. 337).

W. J. BUCKLEY, broker, by stipulation admitted that he simply smoked some Beech-Nut cigarettes proffered by a friend; and "did not pay any particular attention to the package * * * I have not myself purchased any of these 'Beech-Nut' cigarettes." (I, pp. 76-77.)

A. H. CARLSON, sporting goods: "X-Q.24. On this package of scrap tobacco you see the name Lorillard, don't you? A. Yes. X-Q.25. As a person engaged in the tobacco business that would mean that was a P. Lorillard Company? A. Yes. * * * X-Q.41. So when you thought it was made by Beech-Nut Packing Company that was simply a general impression on your part without making any inquiry or study or examination at all? A. Yes. X-Q.42. You had nothing to go on in forming that opinion. That is, if you had looked at the name Lorillard you would have known it was Lorillard tobacco; is that right? A. Yes, I understand that. * * * X-Q.62. So the minute you looked at the package you saw Lorillard's name on it and knew it was Lorillard? A. Yes. X-Q.63. If you had looked at that package when it first came into the store you would have known it was Lorillard? A. Yes, sir. X-Q.64. You never took the trouble to look at it, then? A. No." (I, pp. 427-31).

GEORGE L. CARLTON, grocer: "X-Q.20. The Lorillard Company is a large and well known tobacco concern, is it not? A. Yes. X-Q.21. If you had taken the trouble to look at that package when you first bought those cigarettes you would have known that it was P. Lorillard Company's product, would you not? A. Yes. * * * X-Q.28. You know that these cigarettes are the cigarettes of the P. Lorillard Company? A. Yes. I never examined the package. Never noticed the name on the package." (I, p. 234-5).

JAMES J. CASHMAN, JR., drug clerk: "X-Q.18. And I notice these products that are advertised in the windows are Beech-Nut cigarettes, Murad cigarettes, Mogul cigarettes and other products. Did you ever hear of the P. Lorillard Co.? A. Yes, sir. * * * X-Q.26. Did you ever take the trouble to examine a package of Beech-Nut cigarettes? A. No, I didn't. X-Q.27. Never even

glanced at them? A. No, I didn't. * * * X-Q.38. And the name 'Lorillard' appears on the Beech-Nut package? A. Yes. X-Q.39. And that would indicate to you that is a product of the tobacco people, the Lorillard people, would it not? A. Yes." (I, pp. 265-7).

GEORGE CATLIN, a grain broker, said: "I have never purchased any of these cigarettes, but have smoked some given to me by my friends. I did not examine the package, and therefore I didn't know that the name 'P. Lorillard Co.' appeared thereon, as I now see by examining this package, Plaintiff's Exhibit No. 1." (I, pp. 70-1.)

TRACY N. COLLINS, grocer, by stipulation admits: "I never noticed the name Lorillard or P. Lorillard Company on the packages, as I did not take the trouble to look at them, and as I now see from looking at the package that the name Lorillard's appears on the scrap tobacco and P. Lorillard Company on the cigarette package, and from this I would understand these to be a product of P. Lorillard Company, the tobacco manufacturers." (I, p. 379).

CHARLES P. COOK, a grocer, said: "X-Q.31. Now, when you looked at the package, you saw the name Lorillard on it? A. Yes, but not at that time. X-Q.32. I mean when you did take the trouble to look at it? A. Yes. X-Q.33. And that indicated to you that it was a Lorillard tobacco product? A. Yes, sir. * * * X-Q.36. You would never confuse a food product with tobacco, would you? A. Not likely to. X-Q.37. You regard tobacco as an entirely different class of goods from bacon and chewing gum, do you not? A. We regard them as a different thing, but we carry them both, if that's what you mean." (I, pp. 698-9.)

JOSEPH DERAGO, general store: "X-Q.26. So that you didn't really have any foundation for saying it was made by the Beech-Nut Company? A. No. X-Q.27. Just a guess on your part? A. No, that's all. X-Q.28. You notice the name Lorillard on this package, do you not? A. Yes. X-Q.29. You notice the name P. Lorillard Co. on this cigarette package, do you not? A. Yes, but this

I cannot read, I don't know how to read in English. * * * R.X.Q.42. You never took the trouble to look, did you? A. No, I never took a real look." (I, pp. 331-3).

G. FRANK DISBROW, laborer: "Q. What can you say about it? A. Simply bought the tobacco and put it in my pocket and don't think of looking at it. In the average case, you don't look at the tobacco after it is in your pocket, you reach around and tear the top off and then you reach in for a chew when you care for it. * * *

Q. So that not only did you fail to observe that the word 'Lorillard' was on this package of Beech-Nut chewing tobacco which you had in your hand sometimes at least five times a day, and possibly ten times a day for a period of three months, but you likewise failed to observe that on the back of the package is a statement that the tobacco is made under a special process in Middletown, Ohio? A. I never noticed any marks on it. I have handled thousands and thousands, you might say, in 22 years, packages of Murads, and can't tell you anything about it except the Murad is made by Shinasi Brothers. Q. Or Anargyros? A. Or Anargyros, yes. I want the cigarette, not the package, when I buy it." (V, pp. 2495-2498.)

JAMES EUSTACE, grocery clerk, by stipulation admits: "I never made an examination of the package and had not seen the name P. Lorillard Co. on the package." (I, p. 335).

ARTHUR E. FECHTER, druggist: "X-Q.13. Did you ever hear of the P. Lorillard Company tobacco people? A. Yes. X-Q.14. You have handled some of their goods? A. I think so. X-Q.15. Did you ever take the trouble to look at that package and examine it? A. No. X-Q.16. Do you still continue to buy this tobacco? A. Certainly. X-Q.17. You don't have any interest in who it was made by? A. No." (I, p. 438).

HENRY W. FOOTE, a grocer, said: "X-Q.16. You never took the trouble to read the printed matter when you bought the cigarettes, did you? A. No. X-Q.17. Did you ever hear of the P. Lorillard Company, the tobacco people? A. I have heard of them." (I, p. 566.)

BRYAN O. FOSTER, a grocer's clerk, said: "X-Q.28. You didn't pay any attention to who made it—anything of that sort? A. No, I don't know that I paid any attention as to who made it—I don't know that I did. X-Q.29. That didn't make any difference to you at that time at all? A. Well, not right then I don't suppose it did. * * * X-Q.41. You have sold these cigarettes (referring to cigarettes made by P. Lorillard Company) at Mr. Roach's store, have you? A. Yes, sir. X-Q.42. They come in that kind of a carton I show you—a large carton like this, which has been put in evidence in this case Defendant's Exhibit No. ? A. Yes, sir. X-Q.43. And that has 'Lorillard's Beech-Nut Perfect Cigarettes' on it? A. Yes, sir. * * * X-Q.65. As a user of tobacco, you could tell that was a tobacco package, couldn't you? A. Well, I think I could. X-Q.66. And you never knew them to put up any packages of stuff that looked like a package of cigarettes? A. No, sir. X-Q.67. You can tell a cigarette package a mile off—it's got an individuality all of its own? A. Yes, if I wanted to smoke I could. X-Q.68. As a matter of common sense a package of cigarettes has a shape and appearance all its own? A. Yes, sir. X-Q.69. And you can readily tell them on the shelf of a store? A. Yes, sir." (I, pp. 688-9, 691-2.)

ALEXANDER C. GARDNER, grocer: "X-Q.27. You know of the Lorillard Co.? A. Yes. X-Q.28. You know they are large tobacco manufacturers? A. Yes. X-Q.29. And you have handled their goods of various kinds? A. Yes. X-Q.30. Have they always been very satisfactory? A. Yes. * * * X-Q.34. The name Lorillard always appears on the package, does it not? A. Yes. X-Q.35. And that would indicate it was a Lorillard product? A. Well, the name is so small at first you wouldn't notice it. X-Q.36. But if you took the trouble to examine it, you would notice it, would you not? A. Yes, I would notice it; of course I can read." (I, p. 312-3).

CHARLES E. GEARY, drug clerk: "X-Q.17. Do you know what line of business P. Lorillard is in? A. I think they are in the cigarette business. X-Q.18. Tobacco products? A. Tobacco products, yes. X-Q.19. If you took the trouble to look at that package, you would know that P. Lorillard Company made it, would

you not? A. Naturally, if I had looked at it and saw it was marked with their name on it. X-Q.20. You never even took the trouble to look at that and see who made them? A. No; I just passed them out." (I, p. 132.)

EDWARD J. GLYNN, clerk: "X-Q.21. Did you ever hear of P. Lorillard Company? A. I have. * * * X-Q.25. When you first purchased that package of cigarettes (Mr. Cavanagh showing witness package of Beech-Nut cigarettes), did you look on it to see whose name was on it? A. I did not. X-Q.26. If you had looked at that package you would have seen the Lorillard name on it, wouldn't you? A. I presume I would if I had looked at the package, but I didn't look at the package, I looked at the Beech-Nut. X-Q.27. You didn't take the trouble to examine the package? A. No, I didn't. X-Q.28. Had you looked at it, you would have seen the Lorillard name? A. Yes, I presume so." (I, p. 270).

A. W. GODFREY, a dealer in mill feeds and flour, said: "And in due course, I don't know whether it was that day or the next day, but very soon after, I went downstairs and purchased a package of them to see what there was in them, and upon looking them over I saw Lorillard's name on it. * * * X-Q.22. When you made your examination, then, you found the name P. Lorillard on it? A. When I read the package all over I found the name of P. Lorillard Co. on it. X-Q.23. You knew that P. Lorillard Co. was a large tobacco manufacturer? A. I simply knew that P. Lorillard Co. had been in the tobacco business, but in regard to their size, I couldn't state." (I, pp. 50, 53.)

NATHAN HAMMERMAN, drug clerk: "X-Q.22. You have heard of P. Lorillard Co.? A. Yes, sir. X-Q.23. They are a large tobacco concern? A. Yes. X-Q.24. That name would naturally indicate to you that it was their product? A. Yes, it would, if I had gone to the trouble to look at it I would have known it; otherwise I wouldn't know whether they were putting it out for the Beech-Nut people." (I, p. 279).

NEWTON HARRISON, dry goods: "X-Q.23. Have you ever heard of P. Lorillard Co.? A. Yes. X-Q.24. You

know them to be large tobacco manufacturers? A. Yes. * * * X-Q.27. If you had taken the trouble to notice the name Lorillard— A. I would have noticed it was not a Beech-Nut product, but the Beech-Nut trade-mark is so conspicuous that I didn't draw any other conclusion but that it was a Beech-Nut product. * * * X-Q.34. You never made any particular inquiries to find out whether or not it was their product? A. I took it as a matter of course that it was their product." (I, pp. 320-1).

JEFFERSON D. HAYDEN, grocer: "X-Q.63. Whose name is on Old Virginia cheroots? A. P. Lorillard Company. X-Q.64. What name on the scrap tobacco? A. P. Lorillard Company. X-Q.65. What name on the Climax chewing tobacco? A. P. Lorillard Company. X-Q.66. I notice you also sell Beech-Nut cigarettes? A. Yes, sir. X-Q.67. Whose name is on that Beech-Nut package (showing package)? A. Lorillard Company, looks like. X-Q.68. P. Lorillard Company? A. Yes, sir. X-Q.69. And this little yellow tag or slip that is over the carton of cigarettes, whose name appears on that? A. Lorillard. X-Q.70. So all of those products are Lorillard products? A. Yes, sir. X-Q.71. You don't find the name of Beech-Nut Packing Company on any of this tobacco, do you? A. No, sir, I don't see it. X-Q.72. And this receipt you have produced in evidence, that receipt bears, or did bear, but torn, the name P. Lorillard Company, 119 West 40th Street, New York, did it not? A. Yes, sir. * * * X-Q.88. As an ordinary careful man, familiar with business, as you are, when that receipt was given to you, if you looked at it you would have seen P. Lorillard, and known it was a P. Lorillard receipt, would you not? A. If I had observed it carefully. * * * X-Q.109. You never bought any tobacco from the Beech-Nut Packing Company? A. I never have bought anything but some beans, peanut butter and chewing gum, and the tobacco was from Lorillard, I offered for sale as a Beech-Nut product. X-Q.110. And the tobacco, you did not take the trouble to see who made it? A. No." (I, pp. 761-5.)

C. HOUSLING, clerk, by stipulation admits: "When I purchased these cigarettes I did not ask for cigarettes made or put out by the Beech-Nut Packing Company

but simply asked for a package of Beech-Nut cigarettes. I did not examine the package and therefore did not notice the name P. Lorillard Co. appearing thereon, * * * I only bought this one package of cigarettes." (I, p. 340).

MARGARET M. HUNT, cigar stand clerk: "X-Q.13. You never took P. Lorillard Co.'s cigarettes for any product of the Beech-Nut Company, did you? A. No." (I, p. 78.)

DANIEL HUTTNER, butcher: "X-Q.20. When you bought that package of cigarettes, you did not take the trouble to notice that name, P. Lorillard Company on it, did you? A. No, I did not." (I, p. 487).

OSCAR JOSEPH, grocer: "X-Q.27. You never took the trouble to read the writing on a package of Beech-Nut scrap? A. No. X-Q.28. You have heard of the P. Lorillard Tobacco Company? A. Yes, I have heard of them sure. X-Q.29. Do you see Lorillard's name on there (exhibiting Exhibit 3 to witness)? A. Yes, of course, if you stop to read." (I, pp. 619-20).

JOHN JOZSA, grocery clerk: "X-Q.21. You never took the trouble to read the printing on the package to see who made the Beech-Nut scrap, did you? A. No. Generally when somebody wants tobacco in a hurry, I just grab it and give it to them. X-Q.22. You never even took the trouble to look at it to see who made it? A. No. X-Q.23. You see the name Lorillard on there, don't you? A. Yes." (I, p. 627.)

JOHN J. KING, a grain broker, said: "X-Q.17. Did you ever carefully examine that package of Beech-Nut cigarettes, marked Plaintiff's Exhibit No. 1? A. Why, never, carefully, no. I have seen them at a distance, that is all. X-Q.18. You find the name, P. Lorillard Co. on that package, do you not? A. Yes. X-Q.19. Did you ever hear of P. Lorillard Co.? A. Yes. X-Q.20. They are big tobacco people, are they not? A. I understand so. * * * X-Q.23. So, if you had looked at this package you would have considered that it was put up by Lorillard Company, wouldn't you? A. Yes, sir." (I, pp. 60-1.)

CLEMENT W. KIRKPATRICK, rubber business: "X-Q.22. Did you ever hear of the P. Lorillard Company? A. I have heard of it. X-Q.23. What line of business were they in? A. I assume that they are in the tobacco business. X-Q.24. They are large tobacco manufacturers? A. Yes. * * * X-Q.31. And judging from that, would you not take the name P. Lorillard Company on that package of cigarettes to indicate that it is the product of the P. Lorillard Company, tobacco manufacturers? A. I would. X-Q.32. When you first purchased a package of the Lorillard Beech-Nut cigarettes like that Exhibit No. 1, did you look to see whose name was on it? A. I didn't. X-Q.33. Then you didn't examine the package in particular; did you? A. No." (I, pp. 212-3).

SOLOMON S. KRAMER, delicatessen; by stipulation admits: "I never made a close examination either of the cigarette or the scrap tobacco package, and I never read the name Lorillard thereon." (I, p. 334).

F. J. LATZEL, delicatessen: "X-Q.19. You see the Lorillard Company name on it? A. I see it now. I see it last week; never before. X-Q.20. Never took the trouble to look for it? A. Never looked at it. X-Q.21. It doesn't make any difference to you, as long as you sell the tobacco, whose name is on it, does it? A. If they want tobacco and Beech-Nut stuff is good, maybe I sell it." (I, pp. 493-4).

HENRY LE CLAIR, grocer: "Q.6. When you saw, bought and smoked these cigarettes, by whom did you think they were put out? A. Well, by the Beech-Nut people, of course. I did not notice and did not care who they were put out by. * * * X-Q.15. You notice P. Lorillard Company on this package of cigarettes, don't you? (Mr.avanagh displays a package of P. Lorillard Company's cigarettes to Mr. LeClair) A. I notice it after I have been shown. I never cared to look at it. I gave them away. I could not smoke them. X-Q.16. You did not pay any attention to the package at all? A. No." (I, pp. 11-2).

LEO LEWIS, a cigar clerk, said: "X-Q.44. When this cigarette first came to your attention, or reached your store, did you notice the name on it? A. No, sir.

X-Q.45. You didn't take the trouble to examine the package? A. No. I don't think I did. X-Q.46. If you had examined that package, would you have known it was not made by the Beech-Nut Packing Company? A. If I had examined it, yes. X-Q.47. You don't find the Beech-Nut Packing Company's name on it, do you? A. No, I don't find it on it. X-Q.48. But you do find 'P. Lorillard Co.' on there? A. Yes. X-Q.49. And that indicates to you that it is a product of P. Lorillard Company, doesn't it? A. Yes." (I, pp. 84-5.)

P. LYNCH, market clerk, by stipulation admits: "When I purchased the pack of cigarettes I did not ask for cigarettes made by the Beech-Nut Packing Company but merely for a package of Beech-Nut cigarettes and made no particular examination of the package and therefore did not notice the name P. Lorillard Co. appearing thereon." (I, p. 341).

THOMAS F. MALONEY, salesman: "X-Q.11. Did you examine the package to see if the Beech-Nut Packing Company's name appeared on it? A. No, sir. X-Q.12. Then you didn't deliberately buy this as a product of the Beech-Nut Packing Company? A. I did not, no." (I, p. 69.)

JAMES F. MASTERSON, publisher: "Q. Your friend having offered you casually a cigarette out of a Beech-Nut cigarette package, you assumed that the Beech-Nut Packing Company made that cigarette, and when you came to write this financial article for the Financial News you also assumed that the Beech-Nut Packing Company, being the manufacturer of a cigarette must be the manufacturer of a chewing tobacco and a smoking tobacco, that is right? A. Yes, sir. Q. What was on the package of cigarettes that your friend offered you a cigarette from? A. The only thing I observed—on the package of cigarettes? Q. Yes. A. The only thing I observed was the name Beech-Nut. Q. You didn't see P. Lorillard Co. on that, did you? A. I didn't observe it, no." (V. p. 2489.)

JAMES MATREACE, grocery clerk, by stipulation admits: "I know the P. Lorillard Company is a large tobacco concern and I have handled other products of

theirs and if I had seen the name P. Lorillard Co. on the package I would have presumed it was their products. I never paid any particular attention to the matter but simply bought the cigarettes from time to time and sold them over the counter." (I, p. 344).

E. J. McFADZEN, grocer: "X-Q.24. You have heard of P. Lorillard Company? A. Yes. X-Q.25. You know they are large tobacco manufacturers? A. Yes. X-Q.26. If you had seen that name 'P. Lorillard Company' on that package of Beech-Nut cigarettes you would have known it was Lorillard's cigarettes? A. Yes. X-Q.27. Same as you would know the Lucky Strike was the American Tobacco Companys' cigarettes? A. Yes, sir. X-Q.28. But you didn't pay any attention to it and didn't take the trouble to read it? A. That is right. I just took it for granted it was a Beech-Nut product." (I, pp. 557-8).

JOHN MEAD, market clerk, by stipulation admits: "I never made any examination of the Beech-Nut scrap tobacco package and did not notice the name Lorillard thereon. I have never purchased a package of the Beech-Nut cigarettes and have not paid any particular attention to the same." (I, p. 343).

EDWARD MOSCOVITZ, cigar clerk: "X-Q.13. You know the P. Lorillard Company, do you? A. Yes. * * * X-Q.24. So you really never took the trouble to examine the cigarette package, that Beech-Nut cigarette package to know who it was made by? A. No. X-Q.25. When you were under the impression that that cigarette was the Beech-Nut Packing Company product, you hadn't taken the trouble to examine the package to know? A. No." (I, pp. 128-9.)

GEORGE F. MOULTON, druggist: "X-Q.15. Ever hear of the P. Lorillard Company? A. Yes, tobaconists. * * * X-Q.18. So when you first saw that package, or when you handled them first, you didn't pay any attention to the name, just glanced at the package? A. Well, Beech-Nut was the prominent name. X-Q.19. If you had seen Lorillard's name on them you would have known it was the product of the tobacco company, wouldn't you? A. Yes." (Vol. I, pp. 377-8).

THEODORE MUELLER, a druggist, said: "X-Q.20. Mr. Mueller, did you ever hear of the P. Lorillard Company, tobacco manufacturers? A. Yes, sir. X-Q.21. They are very large tobacco manufacturers, aren't they? A. Yes, sir. * * * X-Q.27. And as I understand it, when you first ordered these cigarettes and you received them you noticed they were not made by the Beech-Nut Packing Company, didn't you? A. Yes. X-Q.28. As a man purchasing goods you looked and saw they were not a Beech-Nut brand? A. Yes." (I, pp. 607-8.)

FRANKLIN G. NEAL, trademark lawyer: "X-Q.30. You have heard of the P. Lorillard Company, haven't you? A. I have. X-Q.31. What kind of business do you know them to be in? A. Tobacco business. X-Q.32. When you purchased that package of Lorillard Beech-Nut cigarettes, you didn't examine it to see the name of the manufacturer or the producer thereon, did you? A. No." (I, p. 204.)

CARL W. NEMETZ, grocer: "X-Q.25. You never took the trouble to find who they were made by, did you? A. No, sir, never. X-Q.26. You don't chew tobacco, do you? A. No. X-Q.27. You never read that name 'Lorillard's' on the package, did you? A. I never took particular notice of it, no." (I, p. 552).

FRANK O'CONNELL, HENRY DIECKMAN, W. SHAFFER, H. A. NEFF, grocers, and ISABEL SILAFFER, drug clerk, by combined stipulation admitted: "I never took the trouble to read the printed matter on the package and did not notice the name 'Lorillard' or the name of the manufacturer, and paid no attention to the matter at all, as this Beech-Nut scrap tobacco is a good selling tobacco, which I have had on sale for a number of years past, and have bought at different times, and I would sell it irrespective of what company made it." (I, p. 634.)

MICHAEL O'CONNOR, market clerk: "X-Q.18. When you first purchased a package of these cigarettes, about two months ago, you did not notice the name on it, did you? A. No, I did not. X-Q.19. You did not ask the dealer who they were made by, did you? A. No. I did not. X-Q.20. You just went in and bought cigarettes

and told them just what you wanted? A. I just went in and said 'Give me a package of Beech-Nut cigarettes.' X-Q.21. That was the only thing you asked him? A. Yes." (I, p. 238).

MRS. AMELIA PETERSEN, grocery store: "X-Q.66. You didn't look at a package very closely, did you and read it? A. No, I never read it either." (I, p. 507).

RICHARD E. POPE, grain merchant: "X-Q.17. (By Mr. Cavanagh) Did you ever hear or know of the P. Lorillard Company? A. Oh, yes. X-Q.18. You know they are a large tobacco concern, do you not? A. Yes, I know they are. X-Q.19. Will you examine this cigarette package, Plaintiff's Exhibit No. 1? What name appears on it? A. P. Lorillard Co. X-Q.20. Would that indicate to you that it was a package of P. Lorillard Company? A. I would not notice it. I don't know who makes Lucky Strike, even. X-Q.21. So you don't examine the label? A. No. I am like a Chinaman, I will take a chop without any knowledge of what goes with it." (I, p. 64.)

MIKE SABA, grocer: "X-Q.11. You never took the trouble to find out who made the tobacco, did you? A. No. X-Q.12. You never read the package? A. No, I do not read very much, and I did not look. X-Q.13. You did not pay any attention to it at all? A. No." (I, p. 623).

JOHN SABELIS, commissary clerk: "X-Q.1. Did you ever look for the name of the manufacturer on it? A. No, sir. I don't chew myself and I am not interested. X-Q.2. So you weren't interested in what appeared on the package? A. No, sir. X-Q.3. Did you ever hear of the P. Lorillard Company, tobacco manufacturers? A. I believe I have. * * * X-Q.7. You never took the trouble to notice any of the printing on that package, whether it had name 'Lorillard' on it? A. No, sir. X-Q.8. You weren't at all interested in what was on it or who made the tobacco? A. No, sir." (I, p. 446).

WILLIAM H. SAGE, druggist: "X-Q.10. Did you ever hear of the P. Lorillard Company? A. Oh, yes. X-Q.11. They are large manufacturers of tobacco, are they not?

A. Yes. X-Q.12. On this package of Beech-Nut cigarettes you see the name P. Lorillard? A. Yes, sir. X-Q.13. That would indicate it is that tobacco company? A. Yes. X-Q.14. And likewise on this Beech-Nut scrap tobacco you find the name Lorillard? A. I didn't notice this until after a conversation with this gentleman. X-Q.15. As a matter of fact, when you told the party that the same people that put out the gum were putting out scrap tobacco and cigarettes, you had never really looked into the matter? A. No. X-Q.16. Wasn't of any particular interest to you? A. No. None whatever." (I, pp. 420-1).

C. A. SATTIG, grocery clerk: by stipulation admits he "made no particular examination of the package and did not notice the name P. Lorillard Co. thereon; that if he had he would have known the cigarette to be a product of that company." (I, p. 317).

LLOYD SCHULTZ, grocery clerk: "X-Q.45. You did not pay any attention to who manufactured it or where it came from, or anything? A. No. X-Q.46. When the customers came in like this customer you spoke of this morning, you never got a package of tobacco to compare it with a package of chewing gum to see who made it, did you? A. No. X-Q.47. Just simply had some idle conversation and paid no further attention to it; is that right? A. Yes. X-Q.48. If you wanted to find out whether a newspaper was of a certain date, or a product was made by a certain concern, and you were enough interested, you would read the printing matter and see? A. Yes. X-Q.49. But you were not interested in this case, and paid no attention? A. I did not pay any attention." (I, p. 632.)

ROBERT SKENE, JR., a dealer in sacks for flour and feed, said: "Q.13. Now, you stated you went down and bought a package of these cigarettes. Then what did you do? A. Of course, I examined it and found that the name Lorillard Company was on them. * * * X-Q.26. Are you familiar with the names of any of the big tobacco companies? A. Oh, I am with the Lorillard name and the American Tobacco Company, and Liggett. * * * X-Q.47. When you examined this package of

Beech-Nut cigarettes, Plaintiff's Exhibit No. 1, and saw the name P. Lorillard Co. on it, didn't that indicate to you that that package was made by P. Lorillard tobacco people? A. Yes. X-Q.48. Did you ever know the Beech-Nut Packing Company to put out any tobacco product? A. No." (I, pp. 39-44.)

ARTHUR A. SKINNER, grain broker: "X-Q.12. Did you ever hear of the P. Lorillard people? A. The tobacco people, yes. * * * X-Q.22. So when you purchased those cigarettes, after you examine them, you would have seen that name, P. Lorillard Co. on it, would you not? A. Oh, yes, if I examined them closely, but I didn't notice the cigarettes. I am not particularly interested in who makes them. I open them and smoke them. Of course, I don't know who makes the Fatimas, or the Camel, but I do know who makes Lucky Strike, because I smoke so many of them. X-Q.23. You never really take the trouble to examine them? A. No." (I, pp. 57-8.)

WILLIAM I. THOMAS, grocer: "X-Q.17. Did you ever hear of the P. Lorillard Company? A. Oh, yes. X-Q.18. They are large tobacco manufacturers, are they not? A. Yes. X-Q.19. Put out a nice class of goods? A. Yes. X-Q.20. You notice the name Lorillard on this package, do you not? A. I do on this one. I have never noticed it before. X-Q.21. Never took a good look at it, did you, now? A. No. All I was looking for was tobacco. X-Q.22. If you had noticed the name 'Lorillard's', you would have connected it with the tobacco? A. Why, evidently, yes." (I, pp. 471-2).

W. G. TORREY, a miller representative, said: "X-Q.17. (By Mr. Cavanagh.) You say you have got packages of these cigarettes? A. When they were first on sale here. X-Q.18. When you examined the package, what name did you find on it? A. P. Lorillard Company. Mr. Hinton: Witness examined package before answering the question. X-Q.19. What did that indicate to you? A. That P. Lorillard were the manufacturers." (I, pp. 73-4.)

JOHN E. WATSON, druggist: "X-Q.15. Did you ever see the name 'Lorillard' on it? A. Never paid any partic-

ular attention to it. As a matter of fact, it is same as Bull Durham. Didn't pay any attention to it. X-Q.16. Just simply sell it as so much tobacco? A. That's the idea. X-Q.17. Does the same apply to the cigarettes? A. Yes. X-Q.18. You never noticed the name P. Lorillard Company on those cigarettes? A. Never paid any particular attention to it. * * * X-Q.24. So when you told people that you thought that the scrap tobacco and cigarettes were made by same people who made gum, you didn't have anything on which to base that? A. No." (I, p. 416).

MRS. MATILDA WEDEL, in the cigar business, said: "X-Q.8. What is the name on that package? A. Lorillard. X-Q.9. Do you find the name Beech-Nut Packing Company on that package? A. Not at all. If I had ever stopped to read, I would have never said this was Beech-Nut Packing Company's product. X-Q.10. If you had stopped to read the package you would never have said it was Beech-Nut Company's? A. No. X-Q.11. What brands of cigarettes do you handle? A. All popular brands. Means most established. X-Q.12. Do you handle Murad? A. All. All of Lorillard. X-Q.13. You know Lorillard is a good tobacco concern? A. Yes, sir. X-Q.14. If you had ever taken the slightest trouble to examine that package you would have connected it with the Lorillard Company? A. Yes, sir. Lorillard." (IV, pp. 2212-3.)

WILLIAM C. WEIGEL, grocer: "X-Q.30. Did you ever take the trouble to read any of the writing or printing on the package (indicating)? A. I don't recollect. That is, I couldn't say what it said on there. X-Q.31. You notice the name Lorillard's' on the package? A. Yes. X-Q.32. Did you ever hear of P. Lorillard Company, the tobacco people? A. Yes. X-Q.33. They are a large tobacco concern? A. Yes. X-Q.34. Those jobbers you now get the Beech-Nut tobacco from, they did not tell you it was from the Beech-Nut Packing Company, did they? A. No, sir. X-Q.35. And none of the agents told you it was made by the Beech-Nut Packing Company, did they? A. No, sir. X-Q.36. You never knew the Beech-Nut Packing Company to put out a package of tobacco like this (indicating), did you? A. No. X-Q.37. You

never knew them to sell tobacco at all, did you? A. No." (I, p. 563).

CLARENCE A. WILKINS, variety store: "X-Q.23. But you do sell the Beech-Nut cigarettes? A. I do. X-Q.24. And you buy that from P. Lorillard Co.? A. I buy it through a jobber; the original order was given to the Lorillard salesman. * * * X-Q.37. You know of P. Lorillard Company, do you not? A. Oh, yes, I have bought their goods for years, but I never bought anything direct from them, as I know of." (I, pp. 110-2.) This witness had defective eyesight and was somewhat color blind.

MRS. IDA W. WILKINS, wife of above witness: "X-Q.13. You have never taken any trouble to observe that package, have you? A. No, only as I put it out, not to go through it closely, all the reading on it, and look at it. X-Q.14. Whose name is that written on it? A. P. Lorillard Co., I see written on it. X-Q.15. So, if you had observed that package closely, you would have known that it was a P. Lorillard Co. cigarette? A. Yes, sir; the Lorillard tobacco company." (I, p. 121.)

ROY J. YUNKERS, a cigar salesman, said: "X-Q.3. I show you this package. Exhibit 16, and ask you if you can read that name? A. Lorillard. Yes, sir. X-Q.4. Whose tobacco would you take that to be from that package? A. I would take it to be Lorillard's tobacco. X-Q.5. You do not find the word Beech-Nut Packing Company any place on that package? A. No, sir. X-Q.6. And you know that Lorillard is a large and reputable manufacturer of tobacco? A. Yes, sir. X-Q.7. Have you a very good standing in the trade? A. Very good. X-Q.8. If a man asked you whose tobacco that was, if you took time to even look at it you would say it was Lorillard? A. Yes, sir. X-Q.9. You would immediately connect the name with such cigarettes as Murad, Mogul, Egyptian Dieties, and Climax chewing tobacco? A. Yes, sir." (IV, pp. 2221-2.)

